



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 02-6, GN Docket No. 09-51; DA 13-592]

Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on a proposal to clarify the schools and libraries universal service support program (E-rate program) requirements for bundling devices, equipment and services that are ineligible for E-rate support. Under this proposal, beginning in funding year 2014, service providers may no longer offer bundled ineligible components as E-rate eligible even if they determine the bundled offering falls within the scope of the Gift Rule Clarification Order.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by CC Docket No. 02-6, GN Docket No. 09-51; DA 13-592, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process,

see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Bryan Boyle or Cara Voth, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice in CC Docket No. 02-6, GN Docket No. 09-51, and DA 13-592, released April 9, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW, Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's web site at <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325,

Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Furthermore, two copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW, Room 5-A452, Washington, DC 20554; email: Charles.Tyler@fcc.gov and one copy to Bryan P. Boyle, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW, Room 6-A100, Washington, DC 20554; email: Bryan.Boyle@fcc.gov.

I. INTRODUCTION

1. In the Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on a proposal to clarify the schools and libraries universal service support program (informally known as the E-rate program) requirements for bundling devices, equipment and services that are ineligible for E-rate support (“ineligible components”) with E-rate eligible services and products. In 2012, the Bureau sought comment on a petition filed by the State E-rate Coordinators Alliance (SECA) seeking clarification of how the Commission’s rules requiring cost allocation of ineligible components aligns with language in the Bureau’s 2010 Gift Rule Clarification Order (Order) (DA 10-2355) that allowed, under limited circumstances, the bundling of ineligible end-user devices and equipment without cost allocation. Having considered the comments filed in response to the SECA Petition Public Notice, the Bureau now proposes and seeks comment on additional clarifications to remove any potential uncertainty regarding the

Commission's requirement for applicants to cost allocate ineligible components when those ineligible components are bundled with eligible services.

II. DISCUSSION

2. Based on several unexpected issues that have arisen since the Order was released, we have determined that it may be in the best interest of E-rate applicants, service providers, and the public, for the Bureau to interpret the Commission's rules regarding bundled ineligible components differently than was reflected in the Order. Specifically, we propose to clarify that beginning with applications seeking discounts for E-rate funding year 2014, any ineligible components must be cost allocated, even if bundled with E-rate eligible services and offered to the public or some class of users. As further described herein, we seek comment on this proposal.

A. Requirements for Bundled Ineligible Components

3. We propose that, beginning in funding year 2014, service providers may no longer offer bundled ineligible components as E-rate eligible even if they determine the bundled offering falls within the scope of the Order. E-rate applicants may seek E-rate funding for the eligible services portion of any bundled offering but must provide a cost allocation for any ineligible components including, but not limited to, telephone handsets, computers, cell phones, and other components. We make this proposal out of our concern that the Order language that allowed, under limited circumstances, an exemption of our cost allocation requirements, may lead to unintended consequences. We are persuaded by those interested parties who have expressed concern that an open-ended interpretation and widespread use and expansion of this exception could lead to further strain on the E-rate fund, which is capped and already over-subscribed. Moreover, the out-of-pocket expenses at issue are for ineligible components that recipients have always understood to be ineligible for E-rate support. Additionally, to the extent that the real cost to the provider of the "free" or reduced price ineligible component results in a more expensive bundle, the money saved by not paying for the entire bundle will result in more funds being available to other E-rate recipients for E-rate eligible services. We seek further comment on these concerns and related matters.

4. We make this proposal primarily because the record developed on this issue thus far demonstrates a lack of clarity about the rules regarding cost allocation for bundled ineligible components. We are also not persuaded that the clarifications suggested by stakeholders would be effective because those suggestions could result in excessively burdensome procedures for applicants, service providers and the administrator of the E-rate program, USAC. For example, SECA's proposals and other potential outcomes that include procedures to determine which bundled offerings qualify for an exemption from cost allocation are likely to be administratively unworkable and ultimately costly for the E-rate program. Also, assigning a specific measurement as a maximum threshold for a bundled ineligible component, such as a percentage of a contract price or a specific dollar amount, as at least one commenter recommends, could in turn encourage recipients to set that dollar amount as a goal for spending or might prompt service providers to price equipment just under that maximum. This could further deplete funds, and could have other unintended negative consequences on participant purchasing decisions. Finally, determining whether a bundled service offering is a commercially common practice within the industry, and not a unique offering of an individual service provider, and that the bundled arrangement is currently available to the public and not just to a designated class of subscribers, would require both USAC and ultimately the Commission to perform analysis of individual service provider offerings on a case-by-case basis. We agree that it would be difficult to administer this exemption on a consistent basis without posing a drain on E-rate resources, because it could require additional personnel and market trend analysis that USAC is not prepared for or structured to perform. We seek comment on whether putting measurements and procedures in place to implement the bundling exemption in the Order will cost more to the program than any savings that might be gained by some applicants if we continue to allow the exemption.

5. We also seek comment on any alternatives to our proposal. We ask commenters that support our proposal to provide a specific rationale for their position. To the extent commenters believe that other interpretations would better serve the Commission's goals, including other proposals that might improve program efficiency while protecting E-rate funds, commenters should provide detailed descriptions of their proposals in their comments. We also welcome suggested alternatives that minimize

the impact of these proposals on small businesses as well as comments regarding the cost and benefits of implementing our proposal.

B. Cost Allocation Procedures

6. We considered as part of this proposal the likely impact on applicants and we do not anticipate it will cause an unreasonable burden. E-rate program participants have always been required to detail the costs of ineligible components and our proposal would merely require them to apply this requirement to any bundled ineligible components they may have believed to fall within the purview of the Order. Although this may increase the amount of time applicants spend on their applications, we do not believe that this increase will be significant. We recognize, however, that applicants may desire additional guidance on how to best derive the costs of ineligible end-user devices. For example, for situations where component costs are not easily obtained and applicants must rely on their service providers for cost allocation percentages, how can applicants confirm such percentages? We seek comment on whether we should further clarify our current standard for cost allocations to provide additional guidance concerning end-user equipment. We also seek comment whether there are additional ways the Commission could reduce the burden on E-rate recipients that are required to cost allocate bundled components that they may have believed to be exempt from cost allocation in more recent funding years.

C. Ancillary Components

7. Finally, our proposal addresses only the cost allocation language in the Order pertaining to the treatment of ineligible components and does not purport to alter the Commission's cost allocation rule, 47 CFR 54.504(e). Other than the Order language, the only existing exception to the cost allocation rules is the exception for ancillary components. An insignificant and strictly "ancillary" component can be bundled into a much broader product or service without cost allocation if the ineligible component is ancillary to the principle use of the eligible component, and is the most cost-effective means of receiving the eligible component functionality. In order for an ineligible component to be ancillary, however, its price cannot be determined separately and independently from the price of the eligible components.

SECA asserts that in addition to the Order language, the rules concerning ancillary components may lack clarity and should be addressed by the Bureau. Therefore, we seek comment on whether it is necessary to make changes and, if so, what clarifications could be made to ensure that ineligible components are not bundled under the guise of being ancillary to a much broader product or service. For example, under what circumstances would it be appropriate for an applicant or service provider to assert that a separate piece of equipment, such as a telephone handset, cell phone or tablet, is ancillary to the eligible service it is paired with? Because their prices can almost always be determined independent of any eligible components, we do not think end-user devices could ever be considered ancillary to the services with which they are paired. We seek comment on this position.

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared its Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the rules proposed in this Public Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Need for, and Objectives of, the Proposed Rules

9. The public notice seeks comment on requirements that apply when service providers seek to bundle devices, equipment and services that are ineligible for E-rate support with E-rate eligible services and products. In the public notice, we propose to clarify that beginning with applications seeking discounts for E-rate fund year 2014, any ineligible components must be cost allocated, even if bundled with E-rate eligible services and offered to the public or some class of users. The Bureau's objective for the proposed rule is to provide clarity to E-rate recipients and service providers and stabilize fund expenditures. The current requirement as interpreted in the Order could further strain the E-rate program

because it permits E-rate funding to pay for ineligible components and also lacks sufficient clarity to be interpreted on a consistent and fair basis in the marketplace. This Public Notice seeks comment on the Commission's definition of ancillary services and its relation to E-rate offerings with bundled ineligible components.

10. The prudent use of limited E-rate funding and clarity about E-rate rules are important to the long-term efficacy of the fund. The proposal contained in this public notice will help to achieve the Commission's goal of maintaining fund solvency and providing clear rules to E-rate recipients.

C. Legal Basis

11. The legal basis for any action that may be taken pursuant to the public notice is contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

13. Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census

Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

14. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services.

15. Schools and Libraries. As noted, “small entity” includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.” A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities. In funding year 2007 approximately 105,500 schools and 10,950 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA’s size standard, we estimate that fewer than 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

16. Telecommunications Service Providers. First, neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, under this

category and associated small business size standard, we estimate that the majority of entities are small. We have included small incumbent local exchange carriers in this RFA analysis. A “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

17. Second, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the Commission’s 2010 Trends Report, rel. Sept. 2012, 359 companies reported that they were engaged in the provision of interexchange services. Of these 300 IXCs, an estimated 317 have 1,500 or few employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that most providers of interexchange services are small businesses.

18. Third, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the 2010 Trends Report, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

19. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

20. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the 2010 Trends Report, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. We have estimated that 261 of these are small under the SBA small business size standard.

21. Common Carrier Paging. As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite). Prior to that time, such firms were within the now-superseded category of “Paging.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer

employees, and three firms had employment of 1,000 employees or more. Thus, we estimate that the majority of paging firms are small.

22. In addition, in the Paging Second Report and Order, 12 FCC Rcd 2732, rel. Feb. 24, 1997, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. The SBA has approved this definition. An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

23. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, rel. Sept. 2012, 291 carriers reported that they were engaged in the provision of “paging and messaging” services. Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

24. Internet Service Providers. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of \$25 million or less. The most

current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24, 999,999. Consequently, we estimate that the majority of ISP firms are small entities.

25. Vendors of Internal Connections: Telephone Apparatus Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.” The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

26. Vendors of Internal Connections: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041

establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

27. Vendors of Internal Connections: Other Communications Equipment Manufacturing.

The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).” The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

28. In the Public Notice, the Bureau seeks public comment on proposals for cost allocating bundled ineligible components. The proposed rule could result in minimal additional reporting requirements.

29. These requirements are already part of 47 CFR 54.504(e) which require a clear delineation of eligible and ineligible services that are included on an application requesting E-rate discounts. The result of the Public Notice could be that small entities that had not been cost allocating certain bundled ineligible components per the Order would again be required to comply with 47 CFR 54.504(e) requirements for cost allocating these components. Small entities that are service providers and vendors in the E-rate program would also be required to reexamine offerings in accordance to any changed requirements.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

31. The proposed rulemaking could impose minimal additional burden on small entities. The only additional administrative burden the proposed rulemaking could impose on small entities, however, would be requiring them to cost allocate ineligible components that they may have presumed were exempted from the cost allocation requirements per the Order. Cost allocation requires determining the costs of eligible and ineligible components and reporting the delineation of those costs in a request for E-rate discounts on the FCC Form 471. E-rate recipients had been required to cost allocate ineligible components bundled with eligible services prior to the Order, and are already generally required to cost allocate all ineligible components. Thus, this rulemaking merely removes a short-term exemption that may have been applicable to certain equipment that met the limited qualifications outlined in the Order.

G. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

32. None.

H. Initial Paperwork Reduction Act of 1995 Analysis

33. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,

see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

I. Ex Parte Presentations

34. Permit-But-Disclose. The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules, 47 CFR 1.1200 through 1.1216. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission’s rules. In proceedings governed by § 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing

system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly Scardino,
Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

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